

CIVIL SERVICE COMMISSION MINUTES

November 19, 2003

A regular meeting of the Civil Service Commission was held at 12:30 p.m., in Room 358 at the County Administration Building, 1600 Pacific Highway, San Diego, California.

Present were:

Barry I. Newman
Sigrid Pate
Marc Sandstrom
Gordon Austin
A.Y. Casillas

Comprising a quorum of the Commission

Support Staff Present:

Larry Cook, Executive Officer
Ralph Shadwell, Senior Deputy County Counsel

Selinda Hurtado-Miller, reporting

Approved
Civil Service Commission

December 17, 2003

**CIVIL SERVICE COMMISSION MINUTES
NOVEMBER 19, 2003**

1:30 p.m. CLOSED SESSION: Discussion of Personnel Matters and Pending Litigation

2:30 p.m. OPEN SESSION: Room 358, 1600 Pacific Highway, San Diego, California 92101

<u>Discussion Items</u> 8, 9	<u>Continued</u>	<u>Referred</u>	<u>Withdrawn</u>
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COMMENTS: Motion by Sandstrom to approve all items not held for discussion; seconded by Casillas. Carried.

**CLOSED SESSION AGENDA
County Administration Center, Room 458
(Notice pursuant to Government Code Sec. 54954.2)
Members of the Public may be present at this
location to hear the announcement of the
Closed Session Agenda**

A. Commissioner Newman: **Mike Miller**, former Detentions Processing Technician, appealing an Order of Termination and Charges from the Sheriff's Department.

B. Conference with legal counsel - anticipated litigation. Significant exposure to litigation pursuant to government code section 54956.9, subsection (b): one potential case.

**OPEN SESSION AGENDA
County Administration Center, Room 358**

NOTE: Five total minutes will be allocated for input on Agenda items unless additional time is requested at the outset and the President of the Commission approves it.

MINUTES

1. Approval of the Minutes of the special meeting of October 22, 2003.

Approved.

CONFIRMATION OF ASSIGNMENTS

2. Commissioner Pate: Donna Clark-Richardson, SEIU Local 2028, on behalf of **Mario Nava**, Park Maintenance Worker, appealing an Order of Suspension and Charges from the Department of Parks and Recreation.

Confirmed.

3. Commissioner Austin: **Richard Gross**, Intermediate Clerk Typist, appealing an Order of Demotion and Charges (from Accounting Technician) from the Office of Emergency Services.

Confirmed.

WITHDRAWALS

4. Commissioner Austin: Donna Clark-Richardson, SEIU Local 2028, on behalf of **Kesha Newcomb-Pugh**, Legal Support Assistant II, appealing an Order of Automatic Separation from County Service Upon Absence without Authorized Leave from the HHSA.

Withdrawn.

5. **Richard Goggin**, Deputy Sheriff, appealing the Department of Human Resources' (DHR) determination that he is ineligible to compete in the selection process for the classification of Sheriff's Sergeant. (Continued from the special meeting of October 22, 2003.)

Withdrawn.

DISCIPLINES

Appeals

6. Everett Bobbitt, Esq., on behalf of **2003/005***, Deputy Sheriff-Detentions, appealing the alleged removal of corporal premium by the Sheriff's Department.

RECOMMENDATION: Deny Request.

Staff recommendation approved.

7. Everett Bobbitt, Esq., on behalf of **2003/006***, Deputy Sheriff-Detentions, appealing the alleged removal of corporal premium by the Sheriff's Department.

RECOMMENDATION: Deny Request.

Staff recommendation approved.

Findings

8. Commissioner Newman: **Mike Miller**, former Detentions Processing Technician, appealing an Order of Termination and Charges from the Sheriff's Department.

FINDINGS AND RECOMMENDATIONS:

Employee was charged with Cause I - Incompetency (not able to grasp the basic knowledge necessary to function in his classification as a Detentions Processing Technician (DPT) beyond the pre-book position. Resistant to training and refusal to acknowledge any deficiencies in performance, frequently shifting blame to others; Cause II - Inefficiency; Cause III - Acts incompatible with and/or inimical to the public service. Appellant has been a Detentions Processing Technician "Booking Clerk" for approximately 5 years. The Department presented evidence, that included a) Employee exhibited a much higher error rate than the other DPTs; b) rather than remove Employee because of his high error rate, the Department expanded and intensified his training; c) despite the intensified and expanded training, Employee was unable to progress past Phase II; d) when errors were brought to Employee's attention, he often asserted that he was not trained in that task; e) Employee's reaction to the counseling regarding his errors and the expanded training were often negative and or even hostile; f) at the hearing, the Department also provided testimony that it is their policy that DPTs must be able to handle all DPT duties and be able to function at all facilities.

Employee's case presented somewhat of an anomaly since he appeared quite intelligent and articulate at the hearing but the evidence presented characterized him as unable to learn from his training or mistakes. On the other hand, the evidence regarding his poor attitude was somewhat born out by his demeanor at the hearing. Employee's sarcasm directed at witnesses bordered on the extreme. Nevertheless, the preponderance of evidence clearly supported the Department's charges. By a preponderance of evidence, the Department proved all of the charges contained in the Order to Terminate and Charges. Employee is guilty of Cause I, Cause II, and Cause III. It is therefore recommended that the Order to Terminate and Charges be affirmed; that the Commission read and file this report; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

Motion by Newman to approve Findings and Recommendations; seconded by Austin. Carried.

DISCRIMINATION

Findings

9. Commissioner Austin: Marc Levine, Esq., on behalf of **Brenda Daly**, Deputy District Attorney IV, alleging harassment, retaliation and political affiliation discrimination by the Office of the District Attorney. (Continued from the special meeting of October 22, 2003.)

Prior to the reading of the Findings and Recommendations, Cheryl Ruffier, on behalf of the DA, and Marc Levine, Esq. on behalf of Ms. Daly, addressed the Commission regarding their client's respective views on this matter.

FINDINGS AND RECOMMENDATIONS:

At the regular meeting of the Civil Service Commission on May 7, 2003, the Commission appointed the Office of Internal Affairs to investigate the complaint submitted by Marc Levine, Esq. on behalf of Brenda Daly, Deputy District Attorney IV, which alleged harassment, retaliation and political affiliation discrimination by the office of the District Attorney. Thereafter, the matter was referred to the Office of Internal Affairs for investigation and report back. The Final Investigative Report of OIA concluded that there was insufficient evidence to support Ms. Daly's allegations of harassment, retaliation and political affiliation discrimination; and that probable cause that a violation of discrimination laws occurred was not established in this matter.

Commissioner Austin stated that there are several facts brought to light in OIA's investigation that cause him to recommend a hearing in this matter. However, he emphasized, that by recommending a hearing, he does not in any way want to give the impression that the outcome of a hearing has been predetermined.

Motion by Austin to approve Findings and Recommendations; seconded by Sandstrom.

AYES:	Austin, Sandstrom
NOES:	Newman, Pate, Casillas
ABSTENTIONS:	None
ABSENT:	None

Motion fails for lack of majority vote.

**Motion by Casillas to accept OIA's Report; seconded by Newman.
Carried.**

**AYES: Newman, Pate, Casillas
NOES: Sandstrom, Austin
ABSTENTIONS: None
ABSENT: None**

In summary, on November 19, 2003 the Civil Service Commission, by a vote of three to two, adopted and approved the Final Investigative Report of OIA, elected not to proceed with a hearing and ordered that the OIA report be received and filed.

SELECTION PROCESS

Complaints

10. **Miwa Pumpelly**, Administrative Analyst II, HHSA, appealing DHR's determination that she is ineligible to compete in the selection process for the classification of Administrative Analyst III. (Continued from the special meeting of October 22, 2003.)

RECOMMENDATION: Deny Request.

Staff recommendation approved.

Findings

11. **Diette S. Nazario**, appealing the removal of her name by the DHR from the employment list for Corrections Deputy Probation Officer I.

RECOMMENDATION: Ratify. Appellant has been successful in the appellate process provided by Civil Service Rule 4.2.2.

Item No. 11 ratified.

OTHER MATTERS

12. Public Input.

ADJOURNED 3:05 P.M.

NEXT MEETING OF THE CIVIL SERVICE COMMISSION WILL BE DECEMBER 17, 2003.

* The identity of the peace officer is held confidential per Penal Code Section 832.7 (San Diego Police Officers' Association, et al. v. City of San Diego Civil Service Commission).